IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 8 OF 1999

Shri Anil Dattatraya Aras,]
age about 44 years, residing at 1206/8-B]
Shivajinagar, Pune 411 004.] .. Appellant.
(Ori. Petitioner)

versus

1. Smt. Nisha Sitaram Sabnis alias]
   Smt. Neelima Anil Aras, aged 32 yrs;]
   residing at Renushree Cooperative]
   Housing Society, First floor, 231,]
   Rasta Peth, Pune.]
2. Miss Ankita Anil Aras, aged minor,]
   residing at as above.] .. Respondents.
   (Ori. Respondents)

Mr. K.Y. Mandlik for the appellant.

Mr. Prafulla B. Shah with Ms. Smita Mane for the respondents.

CORAM: F.I. REBELLO &

ANOOP V. MOHTA, JJ

DATED: 10TH AUGUST, 2004.

ORAL ORDER:

1. The appellant was married to the respondent on 3rd October 1995 under the provisions of the Special Marriage Act, 1954. The appellant thereafter came to file the Petition against the respondent No.1 for a decree of divorce being Petition No. 193 of 1998. The relief prayed for by the appellant was for a decree of nullity under Section 4(a) read with Section 24(1)(i) of the Special Marriage Act, 1954. The learned trial court, on the pleadings by the parties, framed the points for determination. The first point for consideration was whether the appellant proves that the first marriage of respondent No.1 with Sitaram Anant Sabnis was in existence at the time this marriage took place on 3rd October, 1995 and, therefore, their marriage is null and void under Section 4(a) of the Special Marriage Act read with Section 24(1)(i) of the said Act, 1954. The Court answered that issue in the negative, against the appellant herein. Apart from that, another issue was framed viz. Whether the respondent proves that her marriage with the petitioner which took place on 3rd October, 1995 is legal and valid. The Court answered that in the affirmative and in favour of the respondent. It is this order which is the subject matter of the present Appeal.

2. At the hearing of the Appeal, on behalf of the appellant, learned counsel contends that considering Section 13-B of the Hindu Marriage Act, the divorce by mutual consent obtained by the respondent with Sabnis is illegal, null and void. Once that be the case, considering Section 4(a) of the Special Marriage Act, 1954, as the respondent has a spouse living, the marriage with the appellant is a nullity of law and consequent to the relief. It is contended that for a divorce by mutual consent, a period of six months must elapse between the date of filing of the Petition and the passing of the decree by the Court. In the instant case, that was not done and consequently, is hit by Section 13-B. Reliance is placed firstly in the judgment of the learned single Judge of this Court in the case of *Nisha Chandrashekhar Khobragade vs. Chandrashekhar Gopichand Khobragade* **[1987, Mh.L.J., 63].** In that case, a Petition for divorce was filed by the wife on the ground of cruelty and by the husband on the ground of cruelty by wife. Compromise application came to be filed setting out that that the marriage had irretrievably broken down and it be dissolved by decree of divorce. On the basis of such application the trial Court was pleased not to decree the suit on the ground that the application was not one which could be entertained under Section 13-B. It was that judgment which was the subject matter of the Appeal before the learned single Judge. The learned Single Judge held that Section 13-B of the Hindu

Marriage Act 1955, does not enable the parties to get a decree of divorce merely for the asking. The power has to be exercised only in the manner provided and no other. The next judgment cited is the case of *Damyanti (Smt.) Kirit Jani Vs. Kirit Lalubhai Jani* **[1993, Mh.L.J., 752]**. The issue down there was slightly different. The learned single Judge was considering the question on an application made under Section 13-B(2), the Court should for the mere asking, grant a decree. The learned Judge held that the Court must satisfy itself that the averments of the petitioner are true and further must be satisfied that the consent of the parties has not been obtained by force, fraud or undue influence and arrive at a conclusion that the parties have mutually agreed that the marriage should be dissolved, then only a decree ought to be passed. The contention on behalf of the appellant is that considering Section 13-B(2), on the suit being filed a Motion ought not to be made earlier than six months. In the instant case, it was not so done and consequently, the decree is a nullity at law.

3. We may considering some dates to find out whether there is merit in the contention advanced on behalf of the appellant. The respondent had filed a suit against her first husband Sitaram A. Sabnis being Suit No.451 of 1992 on 18th March, 1992. An exparte decree for divorce came to be passed on 4th July 1994. An application for setting aside the exparte decree was taken out on 6th January

1996. In between, the respondent and Sitaram A. Sabnis entered into a Consent Terms on 20th June 1996. The exparte decree was set aside on 28th June, 1996. An application thereafter was made to convert the Petition into a Petition for divorce by mutual consent under Section 13-B(1). The respondent was examined and the decree came to be passed on 15th July 1996. The marriage between the appellant/respondent was solemnized on 3rd October 1995 under the provisions of the Special Marriage Act, 1954.

4. With that, we may now consider the contentions. It will be seen at the first instance that when the marriage was solemnized under the Special Marriage Act on 3rd October 1995, the marriage between the respondent and Sitaram A. Sabnis had been dissolved by an exparte decree on 4th July 1994. In other words, considering section 4(a) of the Special Marriage Act 1954, neither party had a spouse living. The marriage, therefore, in the eyes of law, was legal and valid. Will subsequent events result in the marriage, which was in law valid, become illegal or invalid.? Before considering this aspect, we may also consider one other aspect. The contention of the appellant is that his marriage is a nullity at law because on 20th June 1996, the decree of 4th July 1994 was set aside and that the decree passed on 15th July 1996 would be contrary to the provisions of Section 13-B(1) of the Hindu Marriage Act, 1955. The decree of 15th July 1996 is a decree based in validly instituted legal proceedings between the respondent and Sitaram

A. Sabnis. The Family Court, after considering the ground, allowed the Petition and decreed the suit by dissolution of marriage by consent. The respondent was examined. This decree has not been challenged by way of seeking any declaration in the present suit. Sitaram A. Sabnis, who could have challenged the validity of the decree, was not made a party. In other words, what the appellant is calling on the Court to do is to declare a judicial pronouncement as a nullity in law without challenging the same. It is not possible for a Court to hold that a judgment by a Court of competent jurisdiction is a nullity at law considering failure to take into consideration some provisions of the Act without that decree being challenged in proceedings initiated before a competent court and where parties to the decree have an opportunity of having their say. The appellant having failed to seek a declaration or joining Sitaram A. Sabnis to the suit, it will not be possible for this Court to go into the legality or validity of the said decree at the instance of the appellant herein merely because he wants to avoid his marriage with respondent No.1 dated 3rd October, 1995. On that count itself, the contention urged has to be rejected.

Even otherwise, as pointed out earlier, when the marriage was solemnized on 3rd October 1995, it was not hit by Section 4(a) of the Special Marriage Act 1954. The only ground raised is based on Section 13-B(1). The suit itself was instituted, in which the decree was passed, on 18th March, 1992. The

Petition was amended on 15th July 1996. In other words, the amendment would relate back to the date of the institution of the suit which is 18th March 1992. Once the amendment relates back to the date of the suit, it was open to the Family Court to have passed the decree on 15th July 1996 as it would be more than six months after the institution of the suit. Once that be the case, it cannot be said that the marriage solemnized on 3rd October 1995 was not legally constituted or not a valid marriage in law. That contention raised on behalf of the appellant must also be rejected.

5. Having said so, the only contention raised has been rejected, we do not find that the judgment of the Family Court suffers from any error of law or that the findings recorded are perverse. In the light of that, no interference is called for. Appeal dismissed. In the circumstances of the case, there shall be no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]